



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3644 FAX (603) 271-2181



May 14, 2004

Evans Group Inc.
ATTN: Doug Evans
PO Box 246
Lebanon, NH 03766-0246

**NOTICE OF NON-COMPLIANCE and
PERMIT REVOCATION – NCPR # 04-040**

RE: WARNER, EVANS EXPRESSMART, EXISTING UNDERGROUND STORAGE TANK
FACILITY (UST #A-0110335) (DES #199207031)

Dear Mr. Evans:

The New Hampshire Department of Environmental Services ("DES") is hereby notifying you that the above-referenced facility, located at Route 103, Warner, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On August 21, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation ("Notice") will result in revocation of your Permit-to-Operate on August 15, 2004. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.18 Permanent Closure

Env-Wm 1401.18(f)(9) requires a closure report containing results from Env-Wm 1401.18(f)(7) and (8) be submitted to DES within 30 days of the samples being taken. DES has determined that a closure report for the permanent closure of the 8,000-gallon diesel and 500-gallon #2 fuel oil USTs (Tanks 4 and 5) has not been submitted to DES. A closure report for Tanks 4 and 5 must be provided to DES.

Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25(c) requires spill containment devices to have a minimum liquid capacity of 5 gallons. DES has determined that the required spill containment devices for one of the 6,000-gallon gasoline and the 8,000-gallon gasoline USTs (Tanks 8 and 9) had liquid in them and were not able to contain a minimum liquid capacity of 5-gallons. The spill containment devices shall be repaired to enable the devices to collect and hold a minimum capacity of 5-gallons.

3. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25(e) requires all gauges, alarms, or automatic or mechanical devices associated with spill containment and overfill protection to be maintained in good working order to perform their original design function. DES has determined that the overfill protection devices for one of the 6,000-gallon gasoline USTs (Tank 7) does not have a bleeder hole. Verification in writing that a bleeder hole has been incorporated into the overfill protection device for Tank 7 shall be submitted to DES.

NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION – NCPR # 04-040

May 14, 2004

Page 2 of 4

4. Env-Wm 1401.26 Leak Monitoring for New Tanks and Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.26 and/or Env-Wm 1401.31 require that a leak monitor for double-wall tank systems continuously operate. The leak monitoring equipment and devices shall be tested annually for proper operation in accordance with manufacturer's requirements. DES has determined that Tank 9 had 27 inches of liquid in the interstitial space, the leak monitor was in alarm condition, and the tank system was not temporarily closed. Liquid needs to be removed from the interstitial space of Tank 9 and verification that the interstitial sensor is located at the bottom center of the UST shall be provided to DES. Leak monitor replacement or maintenance results or indication that the system has been temporarily closed shall be provided to DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0110335) shall be revoked effective **August 15, 2004**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION – NCPR # 04-040

May 14, 2004

Page 3 of 4

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,



COPY

Lynn A. Woodward, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 0600 0023 9934 3747

cc: Michael P. Nolin, Commissioner
Gretchen R. Hamel, Legal Unit Administrator
Anthony P. Giunta, Director, WMD
Fred McGarry, P.E., Chief Engineer, WMD
George Lombardo, P.E., WMD
Tom Beaulieu, WMD
Mark Antonia, WMD
Health Officer, Town of Warner